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Application Number 10/034,720

Filing Date December 28, 2001

First Named Inventor Earl J. Braxton

Art Unit 3751

Examiner Name Charles E. Phillips

Attorney Docket Number NMC104A US

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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	VanOphem & VanOphem, P.C.		
Signature			
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Date	August 14, 2006	Reg. No.	27053

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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 10/034,720  
Appellant: Earl J. Braxton  
Filing Date: December 28, 2001  
Title: Portable Toilet Shelter Having Improved Stackability

Art Unit: 3751  
Examiner: Charles E. Phillips

Attorney Docket: NMC104A US

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**Reply Brief to Examiner's Answer under 37 C.F.R. §41.41**

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This reply brief is submitted in compliance with the requirements of 37 C.F.R. §41.41 in response to the Examiner's Answer mailed June 14, 2006. The purpose of this brief is to clarify the teachings of the prior art references used in the rejection of the claims since the only rejection of the claims remaining in the application has been made under 35 U.S.C. §103(a). In view thereof, I believe that it is important to point out that the Examiner's recitation of the disclosure of Dahl, U.S. Patent No. 2,820,256 could be considered misleading for the following reasons.

At page 3 of the Examiner's Answer, the Examiner sets forth the following:

“Dahl teaches a toilet shelter employing four walls which can be folded to a stated best shown in Fig. 2 where adjacent walls lie superimposed...”

In column 1 of Dahl, it is amply clear that the objective of Dahl is to provide a structure having four walls which can collapse into a single stack of eight wall sections. The purpose is set forth clearly at column 1, lines 33-44 which states as follows:

“Such a stack is light enough and of small enough dimension to be carried by a passenger automobile and, therefore, may serve for family use as well as for industrial use.”

In the preferred practice of the invention, the enclosure has a doorway on one of its four sides and a permanently hinged door for the doorway. This door is made in two sections lying on opposite sides of the transverse dividing line to permit the desired collapse of the structure into the eight-layer stack.

It is highly desirable to have all eight of the wall sections interconnected to provide insurance against any section becoming separated and misplaced or lost...”

Accordingly, it is amply clear that the objective of Dahl is to teach an invention which discloses an enclosure collapsible into a single eight wall section stack. Figure 2 however, does show one of the steps of collapsing wherein the shelter can be folded to a thickness of about two of the four substantially equal longitudinally planar upright sections of the **strip-like** enclosure. However, Dahl does not teach that the toilet shelter is transportable in this specific state. Further, at page 4 of the Examiner's Answer, the Examiner states as follows:

“On page 8, Appellant introduces new arguments with latch 60 of Fig. 5 of Dahl as the main character. This plot falls [fails] as 60 is clearly i[n]dentified in col. 3, lines 51+, as employed only when “two walls sections of a wall of the enclosure are not directly hinged together.” This is clearly not the case of the Fig. 2 embodiment relied upon.”

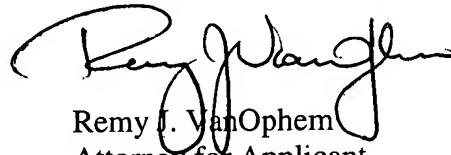
The Appellant takes serious issue with this statement, in that, the disclosure of Dahl very clearly sets forth at column 3, lines 34-59 that when the horizontal hinge 56 of the front wall F and the horizontal hinge 58 of the left side wall L is used, the two sections of each of the remaining pairs of wall sections, that is, wall section R and wall section B may not be interconnected directly by any hinge means whatsoever. In such case, Dahl clearly teaches the

use of the suitable latch means 60 on both wall section R and wall section B instead of the horizontal hinges similar to 56 and 58. Although Figure 2 does not illustrate the latch since the wall sections are facing into the page, Figure 6 clearly shows that these latches 60 are in use since Figure 6 is clearly disclosed as a plan view of the erected structure of Figure 2. Accordingly, the Examiner is incorrect to state that the Figure 2 embodiment does not utilize the latch means because Figure 6 clearly shows that it does.

In view of the above clarification of the Dahl reference, the undersigned attorney respectfully submits to this honorable Board that independent Claims 1, 7, 12, 17 and 21, as well as dependent Claims 2-3, 5, 8, 10, 13 and 15 are clearly allowable over the prior art of record as a matter of law. Therefore, Appellant's attorney respectfully requests that all of the Examiner's rejections under 35 U.S.C. §103 be reversed.

Respectfully submitted,

VANOPHEM & VANOPHEM, P.C.

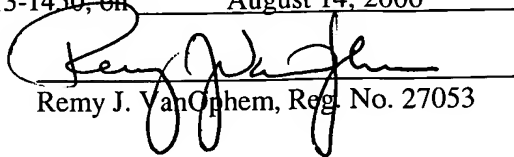
  
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Date: August 14, 2006

  
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